

AMENDED IN SENATE JUNE 25, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 632**

**Introduced by Assembly Member Kehoe**

February 19, 2003

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~~An act to amend Section 22754 of the Government Code, and to amend Section 12302.25 of, and to add Section 12302.21 to, An act to add Section 12302.21 to the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor, declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 632, as amended, Kehoe. In-home supportive services providers: employment benefits.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified, aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

Under existing law, if the state or a county makes or provides for direct payment for the purchase of in-home supportive services, the State Department of Social Services is required to assure the performance on behalf of that IHSS recipient of various rights, duties, and obligations, including to pay contributions for workers' compensation coverage for the recipient's IHSS provider.

This bill, in addition, would require the department to perform or assure the performance of these same rights, duties, and obligations to pay contributions for workers' compensation coverage for IHSS providers that are employed under contracts entered into by a county with a nonprofit agency or proprietary agency.

Because the bill would require each county to perform additional responsibilities in administering the IHSS program, the bill would impose a state-mandated local program.

~~Existing law requires that on or before January 1, 2003, each county shall act as, or establish, an employer for IHSS providers for certain purposes:~~

~~Existing law authorizes specified public agencies to elect, subject to certain conditions, to provide coverage for the agency's employees, as defined, in health benefits plans under the Public Employees' Medical and Hospital Care Act and requires those agencies to make specified contributions to the Public Employees' Contingency Reserve Fund, a continuously appropriated special fund, to cover the administrative costs incurred by the Board of Administration of the Public Employees' Retirement System in providing that coverage.~~

~~This bill would authorize specified entities that meet the in-home supportive services employer of record requirements of these provisions and certain other requirements, subject to negotiations with an employee representative, to purchase health insurance coverage for their employees through the state Public Employees' Medical and Hospital Care Act, if the coverage that is negotiated is eligible for maximum federal financial participation. The bill would provide that the coverage negotiated pursuant to this provision shall not be eligible for state financial participation beyond the funds established for the purposes of providing health insurance coverage to in-home supportive services providers as set forth in the annual Budget Act.~~

~~This bill would make an appropriation by increasing the amount of employee contributions to the Public Employees' Contingency Reserve Fund.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 22754 of the Government Code is~~  
2     ~~amended to read:~~  
3     ~~22754. As used in this part the following definitions, unless~~  
4     ~~the context otherwise requires, shall govern the interpretation of~~  
5     ~~terms:~~  
6     ~~(a) "Board" means the Board of Administration of the Public~~  
7     ~~Employees' Retirement System.~~  
8     ~~(b) "Employee" means:~~  
9     ~~(1) Any officer or employee of the State of California or of any~~  
10    ~~agency, department, authority, or instrumentality of the state~~  
11    ~~including the University of California, or any officer or employee~~  
12    ~~who is a local or school member of the Public Employees'~~  
13    ~~Retirement System employed by a contracting agency that has~~  
14    ~~elected to be or otherwise has become subject to this part, or who~~  
15    ~~is a member or retirant of the State Teachers' Retirement System~~  
16    ~~employed by an employer who has elected to become subject to~~  
17    ~~this part, or who is an employee or annuitant of a special district~~  
18    ~~or county subject to the County Employees Retirement Law of~~  
19    ~~1937 (Chapter 3 (commencing with Section 31450) of Part 3 of~~  
20    ~~Division 4 of Title 3) that has elected to become subject to this part,~~  
21    ~~or who is an employee or annuitant of a special district, as defined~~  
22    ~~in subdivision (i), that has elected to become subject to this part,~~  
23    ~~except persons employed on an intermittent, irregular or less than~~  
24    ~~half-time basis, or employees similarly situated, or employees in~~  
25    ~~respect to whom contributions by the state for any type of plan or~~  
26    ~~program offering prepaid hospital and medical care are otherwise~~  
27    ~~authorized by law.~~  
28    ~~(2) Any officer or employee who participates in the retirement~~  
29    ~~system of a contracting agency as defined in paragraph (2) of~~

~~subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.~~

~~(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.~~

~~(4) Any officer or employee of a contracting agency as defined in paragraph (3) or (4) of subdivision (g) that has elected to become subject to this part, except persons who are determined to be ineligible.~~

~~(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.~~

~~(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.~~

~~(e) "Annuitant" means:~~

~~(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.~~

~~(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21547 or similar provisions of any other state retirement system.~~

~~(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) or (3) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.~~

~~(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.~~

~~(f) (1) “Family member” means an employee’s or annuitant’s spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.~~

~~(2) A recipient of in-home supportive services may not enroll as a family member of an employee of a contracting agency described in paragraph (4) of subdivision (g).~~

~~(g) “Contracting agency” means:~~

~~(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.~~

~~(2) Any public body or agency of, or within California not covered by the Public Employees’ Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds and a trial court as defined in the Trial Court Employment Protections and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).~~

~~(3) The protection and advocacy agency described in subdivision (h) of Section 4900 of the Welfare and Institutions Code, if the agency obtains a written advisory opinion from the United States Department of Labor stating that the organization is an agency or instrumentality of the state or a political subdivision thereof within the meaning of the Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.~~

~~(4) The employer of record described in subdivision (h) of Section 12302.25 of the Welfare and Institutions Code, if the employer obtains a written advisory opinion from the United States Department of Labor stating that the employer is an agency or instrumentality of the state or a political subdivision thereof within the meaning of Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code.~~

~~(h) "Employer" means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.~~

~~(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.~~

~~SEC. 2.—~~

*SECTION 1.* Section 12302.21 is added to the Welfare and Institutions Code, to read:

12302.21. For purposes of providing cost-efficient workers' compensation coverage for in-home supportive services providers under this article, the department shall assume responsibility for providing workers' compensation coverage for employees of nonprofit agencies and proprietary agencies who provide in-home supportive services pursuant to contracts with counties. The workers' compensation coverage provided for these employees shall be provided on the same terms as provided to providers under Section 12302.2 and 12302.5.

~~SEC. 3.— Section 12302.25 of the Welfare and Institutions Code is amended to read:~~

~~12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and other applicable state or federal laws. Each county may utilize a public authority or nonprofit consortium as authorized under Section 12301.6, the contract mode as authorized under Sections 12302 and 12302.1, county administration of the individual provider mode as authorized under Sections 12302 and 12302.2 for purposes of acting as, or providing, an employer under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code,~~

~~county civil service personnel as authorized under Section 12302, or mixed modes of service authorized pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.~~

~~(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.~~

~~(c) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.~~

~~(d) Prior to implementing subdivision (a), a county shall establish an advisory committee as required by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.~~

~~(e) Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about the program on an ongoing basis.~~

~~(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.~~



~~(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.~~

~~(h) An entity that meets the in-home supportive services employer of record requirements of this section may, subject to negotiations with an employee representative, purchase health insurance coverage for its employees through the state Public Employees' Medical and Hospital Care Act, Part 5 (commencing with Section 22751) of Division 5 of the Government Code, if the entity is an agency or instrumentality of the state or a political subdivision thereof within the meaning of Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code and if the coverage that is negotiated is eligible for maximum federal financial participation. The coverage negotiated pursuant to this subdivision shall not be eligible for state financial participation beyond the funds established for the purposes of providing health insurance coverage to in-home supportive services providers as set forth in the annual Budget Act.~~

~~(i) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:~~

~~(1) The public authority ordinance and employee relations procedures.~~

~~(2) The invitations to bid and requests for proposal for contract services for the contract mode.~~

~~(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.~~

~~(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302, to provide in-home supportive services or through county administration of individual providers.~~

~~(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a~~



1 ~~county to provide mixed modes of service as authorized under~~  
2 ~~subdivision (a).~~

3 ~~(j) Any county that is unable to provide the documentation~~  
4 ~~required by subdivision (i) by January 15, 2003, may provide, on~~  
5 ~~or before that date, a written notice to the department that does all~~  
6 ~~of the following:~~

7 ~~(1) Explains the county's failure to provide the required~~  
8 ~~documentation.~~

9 ~~(2) Describes the county's plan for coming into compliance~~  
10 ~~with the requirements of this section.~~

11 ~~(3) Includes a timetable for the county to come into compliance~~  
12 ~~with this section, but in no case shall the timetable extend beyond~~  
13 ~~March 31, 2003.~~

14 ~~(k) Any county that fails to provide the documentation required~~  
15 ~~by subdivision (i) and also fails to provide the written notice as~~  
16 ~~allowed under subdivision (j), shall be deemed by operation of law~~  
17 ~~to be the employer of IHSS individual providers for purposes of~~  
18 ~~Chapter 10 (commencing with Section 3500) of Division 4 of Title~~  
19 ~~1 of the Government Code as of January 15, 2003.~~

20 ~~(l) Any county that provides a written notice as allowed under~~  
21 ~~subdivision (j), but fails to provide the documentation required~~  
22 ~~under subdivision (i) by March 31, 2003, shall be deemed by~~  
23 ~~operation of law to be the employer of IHSS individual providers~~  
24 ~~for purposes of Chapter 10 (commencing with Section 3500) of~~  
25 ~~Division 4 of Title 1 of the Government Code as of April 1, 2003.~~

26 ~~(m) Any county deemed by operation of law, pursuant to~~  
27 ~~subdivision (k) or (l), to be the employer of IHSS individual~~  
28 ~~providers for purposes of Chapter 10 (commencing with Section~~  
29 ~~3500) of Division 4 of Title 1 of the Government Code shall~~  
30 ~~continue to act in that capacity until the county notifies the~~  
31 ~~department that it has established another employer as permitted~~  
32 ~~by this section, and has provided the department with the~~  
33 ~~documentation required under subdivision (i) demonstrating the~~  
34 ~~change.~~

35 ~~(n) Section 10605 may be applied in each county that has not~~  
36 ~~complied with this section by January 1, 2003.~~

37 ~~SEC. 4.—~~

38 *SEC. 2.* Notwithstanding Section 17610 of the Government  
39 Code, if the Commission on State Mandates determines that this  
40 act contains costs mandated by the state, reimbursement to local

1 agencies and school districts for those costs shall be made pursuant  
2 to Part 7 (commencing with Section 17500) of Division 4 of Title  
3 2 of the Government Code. If the statewide cost of the claim for  
4 reimbursement does not exceed one million dollars (\$1,000,000),  
5 reimbursement shall be made from the State Mandates Claims  
6 Fund.

7 *SEC. 3. This act is an urgency statute necessary for the*  
8 *immediate preservation of the public peace, health, or safety*  
9 *within the meaning of Article IV of the Constitution and shall go*  
10 *into immediate effect. The facts constituting the necessity are:*

11 *In order to maintain a steady workforce within the In-Home*  
12 *Supportive Services program, it is necessary that this act take*  
13 *effect immediately.*

